

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-30385-WRS  
Chapter 7

BLAKELY W. PURVIS  
SHANNON S. PURVIS,

Debtors

GM GOLD & DIAMONDS LP,

Plaintiff

Adv. Pro. No. 04-3029-WRS

v.

BLAKELY W. PURVIS,

Defendant

**MEMORANDUM DECISION**

This Adversary Proceeding is before the Court upon the Defendant's motion to dismiss. (Doc. 4). For the reasons set forth below, the motion is GRANTED.

**I. FACTS**

Defendant Blakely W. Purvis, together with his wife Shannon S. Purvis, filed a joint petition in bankruptcy pursuant to Chapter 7 of the Bankruptcy Code on February 10, 2004. (Case No. 04-30385, Doc. 1). The Court scheduled a meeting of creditors for March 12, 2004, and established a "complaints bar" date of May 11, 2004. (Case No. 04-30385, Doc. 3). On May 13, 2004, Plaintiff GM Gold & Diamonds, LP filed a complaint alleging that the indebtedness due it is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A), and that discharge should be denied pursuant to 11 U.S.C. § 727(a)(3), (5). Purvis has filed a motion to dismiss alleging

that the complaint is untimely filed. (Doc. 4). GM Gold has filed a response alleging that it has shown good cause for the late filing and that the Court has discretion to allow a late-filed complaint. (Doc. 8).

## **II. ISSUE**

Whether a bankruptcy court has discretion to excuse a late-filed complaint which would otherwise be barred under Rules 4004(a) and 4007(c), Fed. R. Bankr. P.

## **III. CONCLUSIONS OF LAW**

In this Adversary Proceeding, GM Gold contends that Purvis is indebted to it in the amount of \$7,793.29, plus interest, and that its indebtedness is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A). In addition, it is alleged that Purvis should be denied a discharge pursuant to 11 U.S.C. §§ 727(a)(3) and (a)(5). Complaints initiating Adversary Proceedings such as this must be filed prior to the bar dates established pursuant to Rules 4004(a) and 4007(c), Fed. R. Bankr. P. See, Kontruck v. Ryan, \_\_\_ U.S. \_\_\_, 124 S.Ct. 906 (2004).

Rule 4004(a) provides, in part, that “(i)n a chapter 7 liquidation case a complaint objecting to the debtor’s discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors.” Rule 4004(b) provides that the Court may extend the deadline, provided that the motion is filed prior to expiration of the bar date. The rule makes no provision for extensions of the bar date after its expiration. Thus, it would appear that the plain language of Rule 4004(b) does not provide the Court with discretion to extend the bar date after its expiration.

Rule 4007(c) provides, in part, that “(a) complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors.” This rule also allows the Court discretion to extend the bar date, provided that the motion is filed prior to the expiration of the bar date. As this rule is likewise silent on the question of post bar date extensions, it would appear that the Court may not extend the bar date.

Rule 9006 provides bankruptcy courts with authority to enlarge periods of time provided under the rules, however, the rule has several enumerated exceptions. Rule 9006(b)(3). As Rule 9006(b)(3) specifically limits extensions under Rules 4004(a) and 4007(c) to the terms set forth in those rules, bankruptcy courts do not have discretion to extend these bar dates unless a motion is filed prior to expiration of the period. Byrd v. Alton, (In re: Alton), 837 F.2d 457 (11<sup>th</sup> Cir. 1988); Johnson v. Johnson, (In re: Johnson), 282 B.R. 43 (Bankr. M.D. Fla. 2002); In re: Lee, 238 B.R. 906 (Bankr. S.D. Fla. 1999).

As this Court lacks discretion to extend the complaints bar dates established pursuant to Bankruptcy Rules 4004(a) and 4007(c), the Defendant’s motion to dismiss must be granted. This Court will enter an order of dismissal by way of a separate order.

Done this 5<sup>th</sup> day of August, 2004.

/s/ William R. Sawyer  
United States Bankruptcy Judge

c: Robert J. Mackay, Attorney for Plaintiff  
Lewis B. Hickman Jr., Attorney for Defendant